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March 29, 2023

VIA ECF FILING ONLY

Hon. Lorna G. Schofield, U.S.D.J.  
United States District Court, SDNY  
500 Pearl Street  
New York, NY 10007

Re: Powers v. Memorial Sloan Kettering Cancer Center, et al.  
Docket No. : 1:20-cv-02625

Dear Judge Schofield:

Defendants respectfully submit their objections to Plaintiff's demonstratives he intends to use for the remainder of trial. Defendants have no objections to PD-25 (formerly P-919) for use with Plaintiff's expert economist. Plaintiff's counsel advised that PD-22 and PD-23 have been withdrawn.

- **PD-1: an educational model of a liver**
- **PD-2: an exemplar of NeuWave Medical Certus 140 2.45GHz ablation probe**
- **PD-3: an exemplar of bags, drainage tubes, syringes, and other equipment**

Defendants reserve their right to assert any objections upon receipt and/or review of these demonstratives, which Plaintiff's counsel advised will be made available today in Court.

- **PD-18: an animation of the 4/10/17 ablation procedure, and**
- **PD-20: an animation of the 4/10/17 ablation data**

Defendants object to PD-18 and PD-20 because Plaintiff cannot lay the proper foundation for these animations. The times utilized in the animations are taken from the ablation machine's "call home data." However, Plaintiff has no expert testimony to explain this "call home data." The expert report of Plaintiff's expert, Dr. Navuluri offers no opinions regarding this "call home data."

In addition, during Dr. Navuluri's deposition, he testified that he has not seen this type of data before. See Doc. 426-2, T.160:21-161:11. Dr. Navuluri further testified that he did not know if the "Call Home" data was raw data or not. Id., T.161:12-162:3. These animations masquerading as to how the actual procedure was performed without any expert testimony to support same is misleading to the jury and unduly prejudicial.

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- **PD-24: set of demonstrative summaries of lab values**

On March 28, 2023, Plaintiff improperly utilized PD-24 during the *de bene esse* deposition of his expert, Dr. Shah, without advising Defendants of his intended use of same. Defendants have no objection to PD-24 so long as Plaintiff does not object to Defendants' respective proposed lab graphs (DD-23 and DD-24).

Respectfully submitted,

KAUFMAN BORGEEST & RYAN LLP

/s/ Betsy D. Baydala

Betsy D. Baydala

cc: via ECF filing

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